

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1065 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

LAXMAN @ ULIDADAS KARANLAL KOSHTI

Versus

DY.POLICE COMMISSIONER

Appearance:

MR CB DASTOOR for Petitioner

MR KC SHAH, A.P.P., for Respondents

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 19/09/96

ORAL JUDGEMENT

By notice dated 18th February 1995 the petitioner was called upon to show cause why he should not be externed from the territorial limits of the city of Ahmedabad and the adjoining area of Ahmedabad (Rural), Gandhinagar, Kheda and Mahesana Districts for a period of two years. After the petitioner gave reply dated 20th November, 1995, the first respondent passed impugned

order dated 13th February 1996 u/s. 56(b) of the Bombay Police Act externing the petitioner from the aforesaid orders for a period of two years. The petitioner carried the matter in Appeal before the Appellate Authority, who by impugned order dated 29th June 1996, rejected the petitioner's Appeal. That is how the petitioner is before this Court by virtue of Article 226 of the Constitution of India challenging the aforesaid two orders of externment and rejection of Appeal.

2. The first grievance of the learned Advocate appeearing for the petitioner is that in the similar circumstances the Appellate Authority in the case of appeal between Shri Sidhraj Muljibhai Solanki and the Sub-Divisional Magistrate, entertained the submission of the petitioner there on the ground on which the petitioner there was sought to be externed were vague and devoid of particulars and, therefore, the opportunity of petitioner there of making effective representation and of levelling the effective challenge to the proposed order of externment was not made available to him. The Appellate Authority in that case accepted the submission so made on behalf of said externee Mr.Sidhraj Muljibhai Solanki. However, in the present case the learned Appellate Authority has failed to consider this ground of the present petitioner. The learned Advocate for the petitioner placed the order dated 31.7.1996 (zerox copy) on the record of this petition in order to pray before this Court an appropriate direction to the Appellate Authority to reconsider the matter from the stand point of the aforesaid ground of challenge.

3. Mr.K.C.Shah, learned A.P.P. for the respondents has opposed this request by submitting that one order of the Appellate Authority will not be binding to the other appellate Authority or the same appellate authority. However, it would be clear to show that the appellate authority is required to consider such a ground if taken by the petitioner. It is a different matter that the Appellate Authority may come to a different conclusion for his own reasons. The matter is one of consideration and not of taking the same view as has been taken by the other authority. Hence the matter is required to be sent back to the Appellate Authority for reconsideration of the matter after hearing the petitioner - appellant afresh. Following order is, therefore, passed :

The impugned order passed by the appellate Authority on 29th June 1996 is hereby quashed and set aside and the matter is remanded to the concerned Appellate Authority for deciding the same afresh after

giving opportunity to the petitioner. The matter shall be accordingly heard and decided within a period of five weeks from the date of receipt of the writ of this direction. Rule made absolute only to the aforesaid extent.

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